

purposes as described in this document. Regulations governing the Atlantic herring fishery require publication of this notification to advise vessel and dealer permit holders that 95 percent of the Atlantic herring TAC allocated to Area 1B has been harvested, and no TAC is available for the directed fishery for Atlantic herring harvested from Area 1B.

**DATES:** Effective 0001 hrs local time, December 24, 2005, through 2400 hrs local time, December 31, 2005.

**FOR FURTHER INFORMATION CONTACT:** Don Frei, Fisheries Management Specialist, at (978) 281-9221.

**SUPPLEMENTARY INFORMATION:**

Regulations governing the Atlantic herring fishery are found at 50 CFR part 648. The regulations require annual specification of optimum yield, domestic and foreign fishing, domestic and joint venture processing, and management area TACs. The 2005 TAC allocated to Area 1B for the fishing year (70 FR 21971, April 28, 2005) is 10,000 mt (22,046,226 lb).

The regulations at 50 CFR 648.202 require the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor the Atlantic herring fishery in each of the four management areas designated in the Fishery Management Plan for the Atlantic Herring Fishery and, based upon dealer reports, state data, and other available information, to determine when the harvest of Atlantic herring is projected to reach 95 percent of the TAC allocated. When such a determination is made, NMFS is required to publish notification in the **Federal Register** of this determination. Effective upon a specific date, NMFS must notify vessel and dealer permit holders that vessels are prohibited from fishing for, catching, possessing, transferring or landing more than 2,000 lb (907.2 kg) of herring per trip or calendar day in or from the specified management area for the remainder of the closure period. Transiting of Area 1B is allowed under the conditions specified below.

The Regional Administrator has determined, based upon dealer reports and other available information that 95 percent of the total Atlantic herring TAC allocated to Area 1B for the 2005 fishing year is projected to be harvested by December 23, 2005. Therefore, effective 0001 hrs local time, December 23, 2005, federally permitted vessels may not fish for, catch, possess, transfer or land more than 2,000 lb (907.2 kg) of Atlantic herring in or from Area 1B per trip or calendar day through December 31, 2005; except a vessel may transit, or land herring in Area 1B with more than

2,000 lb (907.2 kg) of herring on board, provided such herring were not caught in Area 1B, and provided all fishing gear is stowed and not available for immediate use as required by 648.23(b). Effective December 23, 2005, federally permitted dealers are also advised that they may not purchase Atlantic herring from federally permitted Atlantic herring vessels that harvest more than 2,000 lb (907.2 kg) of Atlantic herring from Area 1B through December 31, 2005, 2400 hrs local time.

**Classification**

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: December 21, 2005.

**Alan D. Risenhoover,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 051017270-5339-02; I.D. 093005B]

**RIN 0648-AT85**

**Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fishery; 2006 and 2007 Fishing Quotas for Ocean Quahogs**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule.

**SUMMARY:** NMFS is specifying the final quotas for the ocean quahog fishery for 2006 and 2007. Specifications for the Atlantic surfclam and Maine ocean quahog fishery, which remain unchanged from the 2005-2007 multi-year quota specifications, are reprinted here for clarity. Regulations governing these fisheries require NMFS to publish the revised allowable harvest levels of ocean quahogs from the Exclusive Economic Zone for the 2006 and 2007 fishing years.

**DATES:** Effective from January 27, 2006, to December 31, 2007.

**ADDRESSES:** Copies of supporting documents, including the

Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), and the Essential Fish Habitat Assessment, are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904-6790.

The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, and public comments and responses, and the summary of impacts and alternatives contained in the Classification section of the preamble of this final rule. Copies of the small entity compliance guide are available from Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930-2298. A copy of the EA/RIR/IRFA is accessible via the Internet at <http://www.nero.noaa.gov/nero/regs/com.html>.

**FOR FURTHER INFORMATION CONTACT:** Brian R. Hooker, Fishery Policy Analyst, 978-281-9220.

**SUPPLEMENTARY INFORMATION:** The Fishery Management Plan for the Atlantic Surfclam and Ocean Quahog Fisheries (FMP) requires that NMFS, in consultation with the Mid-Atlantic Fishery Management Council (Council), specify quotas for surfclams and ocean quahogs on a 3-year basis, with an annual review, from a range that represents the optimum yield (OY) for each fishery. It is the policy of the Council that the levels selected allow sustainable fishing to continue at that level for at least 10 years for surfclams and 30 years for ocean quahogs. In addition to this constraint, the Council policy also considers the economic impacts of the quotas. Regulations implementing Amendment 10 to the FMP (63 FR 27481, May 19, 1998) added Maine ocean quahogs (locally known as mahogany quahogs) to the management unit, and provided that a small artisanal fishery for ocean quahogs in the waters north of 43°50' N. lat. has an annual quota within a range of 17,000 to 100,000 Maine bu (5,991 to 35,240 hL). As specified in Amendment 10, the Maine mahogany ocean quahog quota is allocated separately from the quota specified for the ocean quahog fishery. Regulations implementing Amendment 13 to the FMP (68 FR 69970, December 16, 2003) established the ability to set multi-year quotas. An evaluation, in the form of an annual quota recommendation paper, is conducted by the Council every year to determine if the multi-year quota specifications remain appropriate. The fishing quotas must be in compliance with overfishing

definitions for each species. In proposing these quotas, the Council must consider the available stock assessments, data reported by harvesters and processors, and other relevant information concerning exploitable biomass and spawning biomass, fishing mortality rates, stock recruitment, projected fishing effort and catches, and areas closed to fishing.

At its June 2005 Council Meeting, the Council voted to recommend maintaining the 2005 quota of 5.333 million bu (284 million L) for the ocean quahog fishery for 2006 and 2007,

which was a change from the ocean quahog specifications for these fishing years published in the **Federal Register** on January 12, 2005 (70 FR 2023). At this same meeting, the Council recommended no change from the existing specifications for Atlantic surfclam and Maine ocean quahog for the 2006 and 2007 fishing years.

The final quotas for the 2006–2007 ocean quahog fishery are shown in the table below. The quotas for the Atlantic surfclam and Maine ocean quahog are re-stated in this table for clarity. Under this action, the 2005 harvest level for

ocean quahogs is maintained for 2006 and 2007. The Atlantic surfclam and ocean quahog quotas are specified in standard bu of 53.24 L per bu, while the Maine mahogany ocean quahog quota is specified in “Maine” bu of 35.24 L per bu. Because Maine ocean quahogs are the same species as ocean quahogs, both fisheries are assessed under the same ocean quahog overfishing definition. When the two quota amounts (ocean quahog and Maine ocean quahog) are added, the total allowable harvest is still lower than the level that would result in overfishing for the entire stock.

#### FINAL 2006–2007 OCEAN QUAHOG<sup>1</sup> QUOTAS AND RE-STATEMENT OF ATLANTIC SURFLAM<sup>1</sup> AND MAINE OCEAN QUAHOG QUOTAS

	2006		2007	
	bu	hL	bu	hL
Ocean Quahogs <sup>2</sup>	5.333	2.840	5.333	2.840
Surfclams <sup>2</sup>	3.400	1.810	3.400	1.810
Maine Ocean Quahogs <sup>3</sup>	100,000	35,240	100,000	35,240

<sup>1</sup>Numerical values are in millions except for Maine ocean quahogs

<sup>2</sup>1 bu = 1.88 cubic ft. = 53.24 liters

<sup>3</sup>1 bu = 1.2445 cubic ft. = 35.24 liters

#### Ocean Quahogs

The final 2006–2007 quotas for ocean quahogs reflect a decrease from the 2006–2007 specifications published in the **Federal Register** on January 12, 2005 (70 FR 2023). Those specifications required an increase in the 2005 ocean quahog quota from 5.333 million bu (284 million L) to 5.666 million bu (301.6 million L) in 2006 and 6.000 million bu (319.4 million L) in 2007. However, due to an unexpected surplus of ocean quahog product on the market, the previously planned increase in ocean quahog quota is no longer warranted. The assessment for ocean quahogs found that the current biomass is high, and the resource surveyed from southern New England to southern Virginia is not overfished and overfishing is not occurring. When there are market surpluses, a quota allocation owner could simply choose not to fish the quota allocation, however this would leave a surplus of individual transferrable quota shares on the market. Many individuals participate in this fishery by leasing their excess quota shares on an annual basis. When harvests are reduced in response to market demand, fishery participants that depend on income from leasing their quota incur a financial loss. National Standard 8 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens

Act) requires that management measures should, to the extent practicable, minimize adverse economic impacts on fishing communities. This action would reduce the amount of quota shares on the market ensuring the sustained participation of individuals dependent on the annual lease of ocean quahog quota shares.

#### Comments and Responses

NOAA Fisheries Service received one comment on the proposed rule (November 1, 2005; 70 FR 65874) during the comment period. The comments submitted, however, were not relevant to the proposed rule, but rather spoke to concerns about the regional fishery management council process and commercial fishing in general, and are thus not responded to in this final rule.

#### Classification

This action is exempt from review under Executive Order 12866.

A description of the reasons why this action is being taken by the Agency and the objectives of this final rule are continued in the preambles of the proposed rule and this final rule. This action does not contain any collection-of-information, reporting, or recordkeeping requirements. It does not duplicate, overlap, or conflict with any other Federal rules. This action is taken under the authority of the Magnuson-Stevens Fishery Conservation and

Management Act (Magnuson-Stevens Act) and regulations at 50 CFR part 648. There are no compliance costs associated with this final rule.

#### Final Regulatory Flexibility Analysis (FRFA)

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), prepared this FRFA in support of the 2006–2007 ocean quahog quota specifications. The FRFA incorporates the economic impacts summarized in the IRFA and the corresponding RIR which were prepared for this action. The IRFA was published in the proposed rule and is not repeated here. Copies of the IRFA, FRFA, and RIR prepared for these quota specifications are available from the Northeast Regional Office (see **ADDRESSES**). A description of why this action was taken, the objectives of, and the legal basis for this rule, are contained in the preamble to this final rule and are not repeated here.

#### Summary of Issues Raised by the Public Comments in Response to the IRFA

No significant issues related to the IRFA or the economic effects of the proposed rule were raised in the public comments.

*Description and Estimate of Number of Small Entities to Which this Rule Will Apply*

This action applies to commercial fishing vessels holding ocean quahog quota shares. The Small Business Administration (SBA) defines a small commercial fishing entity as a firm with gross receipts not exceeding \$3.5 million. In 2004, a total of 29 vessels reported harvesting surfclams and/or ocean quahogs from Federal waters under an Individual Transferable Quota (ITQ) system. Average 2004 gross income for the ocean quahog harvesters was \$789,748 per vessel. Each vessel in this analysis is treated as a single entity for purposes of size determination and impact assessment. All 29 commercial fishing entities would thus fall under the SBA size standard for small commercial fishing entities. Additionally, there were 56 ocean quahog quota allocation owners as of August 22, 2005. An allocation owner may choose to fish or lease his or her quota allocation.

*Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

This rule does not impose any new reporting, recordkeeping, or other compliance requirements. Therefore, the cost of compliance would be unchanged.

*Description of Minimization of Economic Impacts on Small Entities*

Economic impacts on small entities have been minimized within the constraints of the FMP. Specifically, the commercial quotas must meet the conservation objectives of the FMP, implemented in 50 CFR part 648 under the authority of the Magnuson-Stevens

Act. This final rule establishes harvest levels for ocean quahogs at the most economically viable quota level.

The Council analyzed four ocean quahog quota alternatives in addition to the preferred alternative. The alternatives are as follows: The preferred alternative of maintaining the 2005 quota level; an alternative with a 25-percent (1.333 million bu (71 million L)) decrease; an alternative with the 2004 status quo of 5.000 million bu (266.18 million L); an alternative with a 6.2-percent (0.333 million bu (17.73 million L)) increase; and an alternative with an increase to the maximum allowable quota (6.000 million bu (319.4 million L)). The minimum allowable quota specified in the current OY range is 4.000 million bu (212.94 million L) of ocean quahogs. Adoption of a 4.000 million bu (212.94 million L) quota would represent a 25-percent decrease from the current quota. This alternative would take the most conservative approach to managing the fishery that is currently available to the Council, but would result in the fewest economic benefits available to the ocean quahog fishery because it would produce the fewest landings. The alternative to reduce the quota to 5.000 million bu (266.18 million L) would reduce the amount of available quota share and thus the overall quota to the 2004 level. This alternative is not preferred because the industry believes that a reduction in quota from 2005 would communicate shortages in supply or harvesting capacity to the market. The other alternatives all propose to increase the quota. These are not preferred as they would create a fishery-wide surplus of quota share that could prevent small fishing entities from leasing or selling their individual surplus quota share to

other entities with access to a steady market. While an increase is not warranted at this time, the Council chose to keep some flexibility in the quota so the industry would be able to react to an increase in product demand. Given this information, the Council and NMFS have chosen to maintain the 2005 ocean quahog quota level of 5.333 million bu (284 million L) for 2006 and 2007.

*Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the action a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared. Copies of the guide will be sent to all holders of commercial Federal Atlantic surfclam, ocean quahog, and the limited access Maine ocean quahog fishery permits. The guide will also be available on the internet at <http://www.nero.noaa.gov>. Copies of the guide can also be obtained from the Regional Administrator (see **ADDRESSES**).

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: December 21, 2005.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

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